

1 **MARLIN & SALTZMAN, LLP**  
2 Stanley D Saltzman, Esq. (SBN 90058)  
3 Christina A. Humphrey, Esq. (SBN 226326)  
4 Leslie H. Joyner, Esq. (SBN 262705)  
5 29229 Canwood Street, Suite 208  
6 Agoura Hills, California 91301-1555  
Telephone: (818) 991-8080  
Facsimile: (818) 991-8081  
ssaltzman@marlinsaltzman.com  
chumphrey@marlinsaltzman.com  
ljoyner@marlinsaltzman.com

7 **LABOR LAW OFFICE, A.P.C.**  
8 Michael L. Carver, Esq. (SBN 173633)  
9 Michelle M. Lunde, Esq. (SBN 246585)  
10 1395 Ridgewood Drive, Suite 300  
Chico, California 95973  
Telephone: (530) 891-8503  
Facsimile: (530) 891-8512

11 Attorneys for Plaintiff Jorge Quezada

12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 JORGE R. QUEZADA, et al.,

15 Plaintiff,

16 v.

17 CON-WAY FREIGHT, INC.,

18 Defendants.

19 ) **Case No. 09-CV-03670 JSW(NJV)**

20 ) (Assigned to Hon. Jeffrey S. White)

21 ) **CLASS ACTION**

22 ) **PLAINTIFFS' NOTICE OF MOTION AND**  
23 ) **MOTION FOR FINAL APPROVAL OF**  
24 ) **CLASS ACTION SETTLEMENT**

25 ) DATE: January 9, 2015

26 ) TIME: 9:00 a.m.

27 ) DEPT.: 11

1 **TO: ALL PARTIES HEREIN AND TO THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on January 9, 2015, at 9:00 a.m., or as soon thereafter as the  
3 matter can be heard in Courtroom No. 5 in the above entitled courthouse located at 1301 Clay Street,  
4 Second Floor, Oakland, California, 94612, Plaintiff Jorge R. Quezada, on his own behalf, and on behalf  
5 of the certified Class, will move for final approval of a class wide settlement reached with Defendant  
6 Con-way Freight, Inc. ("Defendant"). Defendant does not oppose this Motion.

7 Said Motion shall be based upon this Notice of Motion, the accompanying Memorandum of  
8 Points & Authorities filed herewith, the Declarations of Stanley D. Saltzman and Alejandra Zarate filed  
9 herewith, the Settlement Agreement entered into by the Parties, and upon such further evidence, both  
10 documentary and oral, as may be presented at the hearing of said motion.

11 DATED: December 23, 2014

12 MARLIN & SALTZMAN, LLP  
LABOR LAW OFFICE, A.P.C.

13  
14 By: /S/ Stanley D. Saltzman  
15 Stanley D. Saltzman, Esq.  
Christina A. Humphrey, Esq.  
Leslie H. Joyner, Esq.  
16 Attorneys for Plaintiff and the Plaintiff Class

## **MEMORANDUM OF POINTS & AUTHORITIES**

## **I. INTRODUCTION**

Plaintiff and the certified class seek this Honorable Court's final approval of the non-reversionary \$2,000,000 settlement in this case, which was first filed on February 17, 2009. Previously, this Court issued its Order of October 15, 2012, granting Plaintiff's motion for class certification. (Docket No. 88) On October 3, 2014, this Court granted preliminary approval to this settlement. (Docket No. 204) The parties now seek this Court's final approval of the settlement reached.

Plaintiff and the certified class are pleased to inform the court that:

All class members were mailed the approved form of Notice of Proposed Class Action Settlement and Hearing.

As noted in the Preliminary Approval motion filed on September 2, 2014, (Docket No. 202), class members will be mailed settlement checks unless they affirmatively elect to be excluded from the settlement.

As of the deadline for exclusions to be submitted, which expired on December 2, 2014, there were only 9 (nine) such requests for exclusion received by the Settlement Administrator. Accordingly, this results in a 99.57% participation rate in the settlement. (*See*, Declaration of Alejandra Zarate, Case Manager of the approved Settlement Administrator, CPT, Inc., at Para. 14, filed concurrently herewith).

There have been no objections filed concerning the terms and conditions of the settlement.<sup>1</sup>

There have been no objections filed concerning the request for an enhancement award for the representative plaintiffs.

There have been no objections filed concerning the request for an award of attorneys' fees and costs to class counsel.

The settlement requires defendant to pay \$2,000,000 for the benefit of the class members.

All of this Court's orders concerning dissemination of Notice of the Settlement have been

<sup>1</sup> Objections, per the Notice, were to be filed with the Court. As set forth in the Declaration of Stanley D. Saltzman, filed herewith, counsel has checked the Court file docket, and as of this date, no objections have been filed therein. Additionally, counsel has not received copies of any objections.

1 carried out, as set forth in the Declaration of Alejandra Zarate, Case Manager of the approved  
 2 Settlement Administrator, CPT, Inc. The only change that should be brought to the attention of the  
 3 Court is that the administrator was asked to conduct some additional work, for which a quote of \$3,000  
 4 was offered by CPT and approved by class counsel. As this is more than the total for the CPT costs  
 5 which were included in the Class Notice, class counsel has agreed to bear this additional expense out of  
 6 its fees and costs to be awarded by the court.

7 Plaintiffs and the members of the Class are/were employed by Defendant as employee truck  
 8 drivers, known as Driver/Sales Representatives, (DSR's), primarily driving within California. Con-  
 9 way was alleged by the Plaintiff to have wrongfully built into its "trip-pay" several non-driving tasks,  
 10 such as time spent by the drivers on pre-trip inspections, post-trip inspections, delays during runs (i.e.  
 11 while awaiting further loads) and required paperwork.

12 As previously noted in the Motion for Preliminary Approval, and as the Court's docket reveals,  
 13 this case was vigorously litigated.<sup>2</sup> Certification of the class was obtained following a fully contested  
 14 certification motion. The Court was also called upon to rule on not one, but two, fully contested  
 15 summary judgment motions. Defendant also filed and the Court ruled on, and denied, a motion to de-  
 16 certify. Essentially, no stone was left unturned. Ultimately, the Parties were able to reach the now  
 17 pending settlement agreement at the third mediation attempted in the case, only months prior to the  
 18 scheduled trial date.

19 The success of the settlement is highlighted by the lack of any objections to any term of the  
 20 settlement having being presented by any class member. And as also noted above, and highlighted in  
 21 the Declaration of the Settlement Administrator, there were only nine exclusion requests, amounting to  
 22 less than 1/2 of 1 percent of the class.

23 As set forth hereafter, the settlement meets the criteria for final approval which are set forth in  
 24 the *Manual for Complex Litigation*, 4<sup>th</sup> Ed., is well within the range of what would be fair, reasonable,  
 25 and adequate in this case, and thus the plaintiff requests that the Court now grant final approval.

26       ///

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28       <sup>2</sup> To avoid duplication, the plaintiffs' Motion for Preliminary Approval (Docket No. 202), and all  
 documents filed in support thereof, are incorporated herein by this reference.

1       **II. THE SETTLEMENT PROCESS HAS BEEN DUTIFULLY ADHERED TO**  
 2       **AND SUCCESSFULLY CARRIED OUT**

3       **A. Dissemination of Notice:**

4       As noted above, preliminary approval was granted on October 3, 2014. At that time, CPT, Inc.  
 5       was appointed by the Court as the Settlement Administrator. The parties, through the work of CPT,  
 6       have dutifully complied with this Court's orders concerning dissemination of the Notice of Class  
 7       Action Settlement. In addition, the Settlement Administrator established a website for the case, as well  
 8       as a toll free telephone number for class members to call with inquiries concerning the settlement and  
 9       the claims process. The Settlement Administrator has provided this Court with a full report of its  
 10       activities as set forth in the contemporaneously filed declaration of Alejandra Zarate.

11       **B. Motion for Attorneys' Fees and Motion for Enhancement Awards**

12       Pursuant to this Court's order granting preliminary approval, Class Counsel were ordered to file  
 13       their motion for an award of fees and costs and for an enhancement award for the representative  
 14       plaintiff, by no later than November 4, 2014, so that the class members would have ample time to  
 15       consider potential objections to those motions. The motion and supporting papers were filed timely as  
 16       directed by the Court. (Docket Nos. 205 – 209).

17       **C. The Objection Deadline Has Passed**

18       The objection deadline passed on December 2, 2014. There were no objections to the terms of  
 19       the settlement, or to the fee award and enhancement motion.

20       **D. Challenges to Employment History/Information Requests**

21       As set forth in the declaration of the Settlement Administrator, at paragraph 11 thereof, there  
 22       have been no disputes by any class members relating to employment history, which was utilized in part  
 23       to determine settlement shares. At paragraph 10 of the same declaration, the Administrator declares  
 24       that it received a total of 29 telephonic inquiries from class members requesting information, and  
 25       further declares that it was able to respond to all those inquiries.

26       **III. THE SETTLEMENT MEETS, AND EXCEEDS, THE STANDARDS FOR**  
 27       **FINAL APPROVAL**

28       Federal Rule of Civil Procedure 23(e) provides that any compromise of a class action must

1 receive Court approval. The court has broad discretion to grant such approval and should do so where  
 2 the proposed settlement is “fair, adequate, reasonable, and not a product of collusion.” *Hanlon v.*  
 3 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9<sup>th</sup> Cir. 1998); *Joel A. v. Giuliani*, 218 F.3d 132, 138 (2<sup>nd</sup> Cir.  
 4 2000). In determining whether a proposed settlement should be approved, the Ninth Circuit has a  
 5 “strong judicial policy that favors settlement, particularly where complex class action litigation is  
 6 concerned.” (*In re Heritage Bond Litigation*, 2005 WL 1594403, citing *Class Plaintiffs v. Seattle*, 955  
 7 F.2d 1268, 1276 (9th Cir. 1992).)

8 Here, experienced class counsel litigated this action for over five years and fully investigated  
 9 the claims asserted. After this full evaluation was completed, and the case was being prepared for trial,  
 10 the value of the claims was crystalized and those claims that did not have actual value were identified.  
 11 As explained in the preliminary approval motion, and the motion for approval of fees, costs and  
 12 enhancement award, some of the time worked which had been subject to litigation had actually been  
 13 paid by the defendant, and those payments were documented in a database containing Defendant’s  
 14 Kronos timekeeping information. When that database was factored in for the class period, the total  
 15 value of the actual unpaid wages was estimated to be in the \$1 million to \$1.2 million range.

16 The settlement of \$2,000,000 thus represents a recovery of almost twice the actual damages for  
 17 the class as a whole, and allows for payment of a portion of the even more highly disputed penalty  
 18 claims. (Preliminary Approval motion, at pp. 4 – 5, Docket no. 202). The fairness, reasonableness and  
 19 adequacy of any class action settlement depends on “the relative strength of the plaintiffs’ case; the  
 20 risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action  
 21 status throughout the trial; the amount offered in settlement; the extent of discovery completed and the  
 22 stage of the proceedings; the experience and views of counsel; ... and the reaction of class members to  
 23 the proposed settlement.” *Hanlon v. Chrysler Corp., supra*, at 1026 (9th Cir.1998). Here, all standards  
 24 for approval are met, and the discussion of the same presented in the Motion for Preliminary Approval  
 25 applies equally here.

26 Counsel for the Class and Counsel for Defendant each investigated and analyzed the strengths,  
 27 weaknesses and risks of their respective cases. They engaged in vigorous and substantial arms length  
 28 negotiations, assisted by a well known mediator. Simply put, this case is a classic example of a proper,

1 fair and adequate settlement.

2 The Ninth Circuit has shown longstanding support of settlements reached through arms' length  
 3 negotiation by capable opponents. In *Rodriguez v. West Publishing Corp.*, 563 F.3d 948 (9<sup>th</sup> Cir.  
 4 2009), the Ninth circuit expressly opined that courts should defer to the "private consensual decision of  
 5 the [settling] parties." *Id.* at 965, citing *Hanlon, supra*, at 1027. Amongst the primary reasons for  
 6 deferring to such settlements is the combination of the experience of counsel and the participation of a  
 7 neutral (in this case, several neutrals), both of which factors are present here.

8 The *Rodriguez* court "put a good deal of stock in the product of an arms-length, non-collusive,  
 9 negotiated resolution, and have never prescribed a particular formula by which that outcome must be  
 10 tested." *Rodriguez, supra*, at 965 (citations omitted). As the Court explained, "In reality, parties,  
 11 counsel, mediators, and district judges naturally arrive at a reasonable range for settlements by  
 12 considering the likelihood of a plaintiffs' or defense verdict, the potential recovery, and the chances of  
 13 obtaining it, discounted to present value." *Id.* at 965 (citations omitted). *See also, Williams v.*  
 14 *Vukovich*, 720 F.2d 909, 922-923 (6th Cir.1983) ("The court should defer to the judgment of  
 15 experienced counsel who has competently evaluated the strength of his proofs"); 2 *Newberg on Class*  
 16 *Actions* §11.24 (4th Ed. & Supp. 2002); *Manual For Complex Litigation* (Fourth) §30.42.)

17 The proposed settlement has no obvious deficiencies. The fact that there are absolutely no  
 18 objections from any class members is testament to how this settlement has been accepted by the class.  
 19 There is no standard or benchmark for determining whether any given settlement is fair. "Ultimately  
 20 the district court's determination is nothing more than 'an amalgam of delicate balancing, gross  
 21 approximations and rough justice.'" *Officers for Justice, supra*, at 625 (citation omitted). In making its  
 22 determination, the Court should weigh the benefits that the settlement will realize for the class against  
 23 the uncertainty of litigation. *See, Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9<sup>th</sup> Cir.  
 24 1998) ("...it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive  
 25 litigation that induce consensual settlements.")

26 The settlement has been reached after considerable negotiation, and involving the mediation  
 27 efforts of several highly experienced mediators. Each side evaluated the strengths and weaknesses of  
 28 their case and independently came to the conclusion that this settlement represents a responsible means

1 of addressing the claims of Plaintiffs, and the defenses of Defendant. As noted in the Motion for  
2 Preliminary Approval, the settlement represents a compromise between the positions and evaluations of  
3 the two sides to this controversy. Clearly, there were significant disagreements between the Parties as  
4 to the facts, the law, and the application of both to Defendant's business model. Giving credence for  
5 negotiation purposes to some of Defendant's damage related assertions, and to the information  
6 disclosed in the Kronos database, Plaintiffs valued the realistic range of the value of the claims of the  
7 Class to be between \$1million and \$1.2 million, prior to penalties. The non-reversionary amount of  
8 \$2,000,000 represents an undeniable success, resulting in a fair recovery for each and every member of  
9 the Class.

10 **IV. CONCLUSION**

11 The parties have reached this settlement following extensive litigation, ongoing case  
12 discussions and arms-length negotiations. Plaintiffs respectfully request that the Court:

13 1. Grant final approval of the proposed settlement;

14 2. Order payment from the settlement proceeds to the Claims Administrator in the amount  
15 of \$30,500.00;

16 3. Grant the contemporaneously pending Motion for Award of Attorneys' Fees,  
17 Costs and Enhancement for the Plaintiff;

18 4. Enter the proposed Final Approval Order and Final Judgment submitted herewith; and

19 5. Retain continuing jurisdiction over the implementation, interpretation, administration  
20 and consummation of the settlement.

21 DATED: December 23, 2014

**MARLIN & SALTZMAN, LLP  
LABOR LAW OFFICE, A.P.C.**

24 By: /S/ Stanley D. Saltzman

25 Stanley D. Saltzman, Esq.

26 Christina A. Humphrey, Esq.

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28 Attorneys for Plaintiff and the Plaintiff Class